

# THE IMPACT OF MAN-MADE LAWS IN DETERMINING THE JUDGEMENT OF AN ABODE AS BEING ONE OF DISBELIEF OR ISLAM



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## DÂR UL-HARB OR DÂR UL-KUFR?

أثر القوانيين الوضعيّة  
في الحكم على الدار  
بالكفر أو الإسلام

## THE IMPACT OF MAN-MADE LAWS IN DETERMINING THE JUDGEMENT OF AN ABODE AS BEING ONE OF DISBELIEF OR ISLÂM<sup>1</sup>

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<sup>1</sup> Dr. Khâlid al-Anbarî, *Athar ul-Qawânnîn al-Wad'iyyah fi'l-Hukmi 'alâ'd-Dâr bi'l-Kufr aw al-Islâm* (Cairo: Dâr ul-Manhaj, 1424 AH/2004 CE).

**TABLE OF CONTENTS**

- 5 Author's Introduction
- 9 Preface
- 13 The First Discussion:
  - 13 The Defining Reason for Judging an Abode as Being a State of Disbelief or Islam
  - 13 Hegemony, Ascendancy and Sovereignty are the Defining Reason for Judging an Abode as Being of Disbelief According to the Agreement of the Four Madhabs
- 14 The Evidence for that
  - 15 The Statements of the Verifiers from Amongst the Scholars: Ibn Taymiyyah, al Shawkâni, Ibn Hazm and al Ismâ'îli
  - 17 The Statements of the Four Madhabs
  - 17 The Statements of the Scholars of the Ahnâf
  - 19 The Statements of the Scholars of the Mâlikiyah
  - 20 The Statements of the Scholars of the Shâfi'iyyah
  - 22 The Statements of the Scholars of the Hanâbilah
  - 23 The Similitude of the Abode with Regards to Judgement Being Passed on it is Like One Who Has Accepted Islam
  - 24 There is no Problem In what a Body of the Scholars have Clarified by Mentioning the Main Rulings
- 26 The Second Discussion: The Transformation of the Abode of Islam into a State of Disbelief
  - 27 The First Madhab: The Abode of Islam Does Not Become an Abode of Disbelief Absolutely
  - 29 The Second Madhab: The Abode of Islam Becomes an Abode of Disbelief Due to the Perpetration of Major Sins
  - 30 The Contemporary Khawârij Reject the Attribution of this Madhab to their Predecessors from the Original Khawârij
  - 31 The Third Madhab: The Abode of Islam Does Not Transform into an Abode of Disbelief Merely Due to the Disbelievers' Appropriation of it, not until the Ritualistic Symbols of Islam Have Been Discontinued

- 32 The Fourth Madhab: The Abode of Islam Transforms into an Abode of Disbelief with Complete Subjugation and Dominance
- 35 The Fifth Madhab: The Abode of Islam Changes into an Abode of Disbelief When the Disbelievers Conquer it and Manifest Their Rulings
- 35 This Madhab is More Deserving of Being Accepted
- 36 The Third Discussion: The Disbelievers' Capture of an Abode of Islâm and the Muslims Remaining Therein Manifesting Their Islâm
- 37 Fatwa of Shaykhul-Islam Ibn Taymiyyah Regarding Mâridîn
- 38 Fatwa of the Hanafi Jurist al-Isbîjâbî
- 39 Fatwa of the Shâfi'î Jurist ar-Ramlî
- 41 The Fourth Discussion: The Impact of Conventional Laws in Judging an Abode as Being one of Disbelief or Islâm
- 41 The Reasons for the Disagreement
- 42 The First Madhab: The Abodes of Islâm Transform into a Pure Abode of Disbelief
- 42 The Lands of Afghanistan Governed by the Tâlibân is an Abode of Disbelief According to the View of 'Umar Bakrî Muhammad!
- 43 The Muslim Countries Today are Abodes of Disbelief According to Hizb ut-Tahrîr
- 43 Likewise According to the Author of the Book 'The Absent Obligation'
- 44 Refutation of the Book 'The Absent Obligation' [al-Farîdah al-Ghâibah]
- 45 The View of Shaykh Abu Zahrah
- 46 Refutation of Him
- 49 The Second Madhab: The Abodes of Islâm Change into a Composite Abode of Both Disbelief and Islâm
- 52 The Third Madhab: Our Abodes Are Islâmic Even if They Rule By Man-Made Laws
- 54 The View of Shaykh al-Albânî (may Allâh have mercy upon him)
- 54 The Conclusion

**“And they – i.e. Ahlus Sunnah – view the state as being a state of Islâm, not a state of disbelief as viewed by the Mu’tazilah, this is as long as the call to prayer and its establishment is manifest and its people are safely enabled to it.”**

Al-Hâfidh Abu Bakr al-Ismâ’îlî (may Allâh have mercy upon him) in his book (*I’tiqâd Ahlus-Sunnah*, 51)

**“Indeed the countries of Islâm today are not as they were before however in any case they are not countries of disbelief rather they are countries of Islâm ... and the issue concerning it are extremely delicate.”**

Shaykh al-Albânî (may Allâh have mercy upon him) in a recorded discussion.

## AUTHOR'S INTRODUCTION

Indeed all praise is due to Allâh, we praise Him, we seek His help, we seek His forgiveness and we seek refuge in Allâh from the evils of ourselves and from the evils of our actions. Whomsoever Allâh guides then there is none who can misguide him and whomsoever Allâh misguides then there is none who can guide him. I bear witness that there is none worthy of worship except Allâh alone without any partner and I bear witness that Muhammad is His slave and messenger.

### To proceed:

Indeed from the matters which cause the eyes of Islâm to shed tears is what has happened to some of its sons from extremism in dangerous affairs, the Ummah being led to the flames of tribulation, being overpowered by the enemies of the religion and it is a direct cause for it being overcome with trials and humiliation.

**From these matters:** that which the Islâmic jurists have developed in dividing the world into to two abodes: the abode or country of disbelief and the abode of Islâm, for each of its characteristics and rulings is a form of distinguishing the Muslims from the disbelievers and an assertion of the complete disassociation between disbelief and faith.<sup>2</sup>

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<sup>2</sup> **Editor's note:** This is an important issue as some of the contemporary academics, the Muslim ones (who studied and teach in Western universities) and the non-Muslim ones alike, make outrageous claims such as “**Muslims only view things as being either Dâr ul-Harb or Dâr ul-Islâm**” as was said by Dr Ziauddin Sardar in a talk held in London organised by the modernist ‘City Circle’ on 8 September 2006 CE entitled ‘*Bringing the Salafis, Sufis and Secularists Together: Rearticulating Civil Society in Islâm*’ (!! Sardar has become somewhat infamous for his odd statements regarding Islâm and his mockery of aspects of Islâm.

In terms of the non-Muslims who have greatly erred in this regard then they are the following:

- a. *Freedom House*, headed by Nina Shea, in a document on “Saudi publications on hate ideology fill American mosques” when only about fifteen mosques were mentioned within the ‘study’, which constitute less than 1% of all mosques in America! ‘Freedom House’ did not consult or liaise with any mosques or Muslim organizations whatsoever. They neither asked the members of the Islâmic centres their views nor did they enquire into their activities and how the publications are used. In the Freedom House ‘studies’ they also make the huge error, which we see committed by others, of claiming that the Muslims only view the world in terms of *Dâr ul-Islâm* (the abode of Islâm) and *Dâr ul-Harb* (the abode of war) **“and that when Muslims are in the latter, they must behave as if on a mission behind enemy lines”**!!! This is

mentioned on page 13 of the document ‘*Saudi Publications on Hate Ideology Fill American Mosques*’ (Washington: Center for Religious Freedom, 2005). This is an absolutely ignorant statement as Shaykh Khaalid al-Anbaree has stated within his lectures on *Siyaasah ash-Shar’iyyah* (Politics in Light of Islâm) that the domains are split into three: *Dâr ul-Islâm*, *Dâr ul-Kufr* (which is split into two) and *Dâr ul-Harb*, so not just two abodes! And even when Muslims are in an abode of warfare they are not instructed to “**behave as if on a mission behind enemy lines**” (!!?) rather scholars have even noted that when Muslims are in an abode of war they have to tolerate the laws, obey the laws of that land and treachery, killing, stealing et al. are not permitted within it for Muslims who enter that country with a contract of agreement and safety. So we can see here then that ‘*Freedom House*’ and Nina Shea have a totally incorrect approach to begin with! There were a number of *Sufis* who contributed to her reports and within the intros and acknowledgements there is much reference to Hishâm Kabbâni!

- b. Robert Spencer, a Catholic neo-con ideologue who rose to fame after 9/11 as a self-proclaimed ‘Islâmic specialist’!? He is the editor of *The Myth of Islâmic Tolerance: How Islâmic Law Treats Non-Muslims* (New York: Prometheus Books, 2005) which despite its impressive size is actually totally devoid of serious source referencing which the biased and questionable contributors really thought they could do justice to! He, along with Hugh Fitzgerald, is also behind the websites ‘*Jihad Watch*’ and ‘*Dhimmi Watch*’, and the hysterical documentary film entitled *Islâm: What the West Needs to Know*’ which also features Ba’t Ye’or, Serge Tirfikovic and others. The documentary also depends on the words and footage of extremists and discredited preachers such as ‘Umar Bakri Muhammad. The documentary film also claims on its website that “**Virtually every major Western leader has over the past several years expressed the view that Islâm is a peaceful religion and that those who commit violence in its name are fanatics who misinterpret its tenets**” and this is also totally false as the likes of Berlesconi, Putin and General Boykin have been clear in their statements against Islâm. One of the main mistakes, or rather blatant lies, fabrications and distortions, of the likes of Spencer is that they claim that Islâm only views the world as *only* being ‘*Dâr ul-Islâm*’ (an abode of Islâm) or ‘*Dâr ul-Harb*’ (an abode of war which is at war with a *Muslim country*, not unofficial individuals and bandits within a Muslim country who are on the run) and as a result, according to Spencer and his ilk, Muslims view the whole non-Muslim world as *Dâr ul-Harb* and this claim is totally false and a blatant fabrication. So here then we can see how the likes of Spencer are either utterly ignorant of this or blatant liars, some would opt for the latter as being their actual condition! Here they have fallen into exactly the same mistake as Nina Shea et al. of ‘*Freedom House*’.
- c. Mark Silverburg, who is a US attorney and a listed author of the ‘*Ariel Center for Policy Research*’ in Israel. In his book *The Quartermasters of Terror: Saudi Arabia and the Global Islâmic Jihad* (Wyndham Hill Press, 2005) he claims Saudi Arabia has “**spent 87 billion dollars over the past twenty-five years to finance the propagation of Islâmic extremism**”!! In his introduction, he also makes the same blunder as Nina Shea, Robert Spencer and Bernard Lewis, that the “**...Muslim world is divided into two spheres, the House of Islâm (Dar al-Islâm) and the House of War (Dar al-Harb), which is non-Islâmic. In his view, world peace, according to Islâm, is achieved only when the world is subjected to Dar al-Islâm. “The presumption”, says Lewis, “is that the**

Hence with the judgement of conventional laws in most of the Islâmic countries, with great regret, a group from amongst the extremists have taken to them being countries of disbelief and all of its societies as being in *jâbiliyyah*. Consequently, this evil act of excommunication was a justification for the call for *Jihâd* against the people of Islâm, the violation of their blood, wealth and honour and that which is similar to it from the path of the *Hurâriyah Khawârij*. It is not from the methodology of *Ahlus-Sunnah* rather the contemporary *Khawârij* have begun to renounce its ascription to their *Salaf* who have preceded!!

**What is also regrettable** is the fact that a group of the meritorious contemporary people of knowledge have adopted this view although they are against the statement of excommunicating societies and they renounce the consequences of such an action from the violation of blood, wealth and honour, nevertheless their statement is a cradle for the extremists and a justification for their actions.

This research considers that making the act of judging by conventional laws as a defining reason for judging an abode as being a state of disbelief and not an abode of Islâm is incorrect and in contradiction to the legislative texts, the methodology of the *Ahlus-Sunnah* and in opposition to what has been determined by the eminent jurists despite their different *madhabs* (schools of thought) and diverse inclinations, except for that which has been transmitted from a *madhab* from a group of the *Khawârij* and *Mu'tazilah*.

**I have divided this treatise into a preface and four discussions:**

**First:** The defining reason for the judgement of the abode with disbelief or Islâm.

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**duty of jihad will continue, interrupted only by truces, until all the world either adopts the Muslim faith or submits to Muslim rule.””** Silverburg also demonstrates that he has been influenced by the likes of Hishâm Kabbâni as he states in the introduction, “**In the estimated 80% of mosques that the Wahhabists control in America...**” and Silverburg reached this figure based on al-Kabbaanee’s claim in 1998 that “80% of mosques in America are controlled by Wahhabis”!! Therefore, the solution for all of this according to Silverburg is for Islâm to be modernized and moderated, he claims, “**in the same way that Christian and Jewish scholars have (over the centuries) moderated the more strident aspects of their scriptures and promoted those verses that spoke of the brotherhood of man, tolerance and understanding over those portions that speak of exclusivity**” (!!!) Has he heard of Jack Chick, Franklin Graham, Rabbi Yitzak Ginsburg, Rabbi Meir Kahane and others? But then Silverburg states, in a clear demonstration ignorance of the topic: “**To this day, no major Muslim cleric or religious body has ever issued a fatwa condemning Osama bin Laden.**” Even though Imaam ’Abdul’Azeez Bin Baaz (*raheemahullaah*) issued one in the 1990s!

**Second:** Transformation of the abode of Islâm to an abode of disbelief.

**Third:** The disbelievers' seizure of an abode of Islâm and the Muslims remaining settled therein displaying and manifesting their Islâm.

**Fourth:** The impact of man-made laws in determining the abode of disbelief and the abode of Islâm.

**I ask Allâh to make what we write a cleansing of our conscious and a source of blessing for us and upon the Ummah. Allâh is behind the intent and He is the source of help and upon Him we put our trust. There is no movement or power except with Allâh.**

**Written by**

Abu 'AbdurRahmân Khâlid bin 'Alî al-'Anbarî

Ash-Shâriqah in 5/11/1424 AH (corresponding to 28 December 2003 CE)

## PREFACE

The majority of political and law writers are agreed upon the fact that the fundamental pillars of the state are: sovereignty, the government, the people and the country. By sovereignty (or authority) they mean the one endowed with supreme authority in the society and the state and it is the first matter in any political system and the authority in the Islamic political system is for the judgements of Allâh, the Most Exalted the Most High, and the greatest of this is His *tawhîd*, the one far removed from any imperfections.

Indeed, the most important of things which distinguish the Islâmic states from the disbelieving states is the establishment of *tawhîd* with all its types and the elimination of shirk (polytheism) in all its forms and colours. Verily, *tawhîd* was the first of the priorities of the governments of the Prophets hence the most distinguished of what has been brought from the news of the Noble Qur'ân is about the state of Sulaymân (may the peace of Allâh be upon him); its condemnation of the *shirk* inherent within the kingdom of Bilqîs. Furthermore the reports regarding this about the first Islâmic state which the seal of the Messengers (may the peace and blessings of Allâh be upon him) ruled is well known.

Therefore, *tawhîd* is first and last, rather even before the formation of the state and the establishment of the governments. Hence, without any doubt the manifestation of the symbols of *tawhîd* such as the call to prayer and the prayers is a distinguishing sign between the abode of Islâm and the abode of disbelief in that which the Mâlikîs and others have stated. Then of the main concerns and priorities which come after that is to rule in accordance with the blessed, revealed and virtuous Divine Legislation which transcends the boundaries of time and place and is distinguished from other forms of human law and man-made codices by its Rabbâni source and outlook, and by its justice, fairness, equality, perfection, comprehensiveness in absolutely all what people need and all-encompassing of their benefits. This is as it does not require any other source to expand upon it or to understand it.

**The legislative texts establish two fundamentally essential realities, both of which Ahlus-Sunnah receive with obedience, acceptance and submission.**

**The First:** the act of legislation is the sole right of Allâh alone, no person disputes this, no matter how lofty his ability and complete his intellect may be as He the Most High has stated:

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**‘Indeed, judgement belongs to Allâh.’**

{*Yûsuf*: 67}

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**‘And none is partner with Him in His judgement’**

{*al-Kahf*: 26}

ää ä ä

**‘Or have they partners with Allâh, who have instituted for them a religion which Allâh has not allowed.’**

{*ash-Shûra*: 21}

Consequently Allâh is the most superior of all judges and the best of them and His ruling is the truth, it is absolutely just,

ää ä ä

**‘Is not Allâh the Best of judges?’**

{*at-Tin*: 8}

ää á ä ä

**‘And who is better in judgement than Allâh for a people who have firm faith.’**

{*al-Mâ ‘idah*: 50}

**The Second:** it is obligatory upon the Muslims, both the ruler and the ruled, to rule according to what Allâh revealed and refer to it in all spheres of life,

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**“And so judge between them by what Allâh revealed and follow not their vain desires, but beware of them lest they turn you far away from some of that which Allâh has sent down to you.”**

{*al-Mâ’idah* (5): 49}

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**“But no by your Lord they can have no faith until they make you judge in all disputes between them, and find in themselves no resistance against your decisions and accept them with full submission.”**

{*an-Nisâ* (4): 65}

As for the territory then the scholars have expressed it to be an abode (Dâr) and the political books defines it as being: ‘a piece of land and sea, along with the layers of air above it which are in contact with the state which rules over the territory in a complete and firmly established sense.’ The territory is an essential element of the establishment of the state because it is not possible for a people to have an independent existence while in reality they are not upon a specified territory.<sup>3</sup> It is also due to the fact that it is an expression of the distinctive characteristic of the state, the security of its inhabitants and the domain for the application of its authority. Thus, the significance of the territory does not only come from its being a physical geographical element over which its inhabitants reside, but it has an abstract significance in the existence of the state and the materialisation of its distinctive characteristics.<sup>4</sup>

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<sup>3</sup> *Mawsû’ah as-Siyâsah*, vol.6, p.496. See *Fiqh as-Siyâsah as-Shar’îyyah* by the author, p.246

<sup>4</sup> *Mabâdi’ Ilm as-Siyâsah* (p.159). See: *Fiqh as-Siyâsah as-Shar’îyyah* by the author, Shaykh Khâlid, (p.246).

When the book **'Judging By Other Than What Allâh Revealed and the Principles of Excommunication'** by the needy slave, the writer of the(se) lines had explained the conditions of the rulers of man-made laws and their rulings in light of the Book, *Sunnah* and the statements of the *Salaf* of this Ummah in such a manner that: 'It has given the subject its right and the speech has fully satisfied it with that which does not require any addition upon it for clarification and elaboration.' As the Imâm, the Rabbâni Muhammad Nâsir ad-Dîn al-Albâni, may Allâh have mercy upon him, described it in his introduction with which the writer has been dignified with and that which he has written.

It has got to the point where it is binding upon me, in order to be free from blame and as a form of advice to the youth of the Ummah, to detail the view in ruling countries or states which implement these laws which are putting the Muslims to trial and have caused them misfortune and to verify the correct condition for judging (the aforementioned countries) with disbelief or Islâm. This issue is true via research and discussion because of its precision and the gravity of what it entails with some of the extremists. If *takfir* is made of a country that rules by man-made laws if such a country permits the spilling of blood, steal wealth and defiling honour and all that that entails then why does Islam cry out against that?!!!

## **THE FIRST DISCUSSION: THE DEFINING REASON OF RULING AN ABODE AS BEING ONE OF DISBELIEF OR ISLÂM**

The hegemony of the Muslims or the disbelievers over the abode, their authority over it, their possession of it is the defining reason of ruling the abode as being of disbelief or Islâm. Following on from that are indications which are present at times and weak at other times, maybe due to the lack of security, fear or the lack of the application of the rulings of Islâm or disbelief.

Since the word of the four Madhabs are gathered upon the fact that the country becomes an abode of Islâm if it enters into the power of the Muslims and is established under their authority in such a manner that they are able to openly manifest the judgements of Islâm and stop their enemies. Indeed, that only happens through conquest whether forcefully or peacefully, whether all or some of its people become Muslim or they all remain as non Muslims such as a country in which all its inhabitants are from *Ahlul-Dhimmah*<sup>5</sup> for example. It is necessary for us to know that the intent with regards to the manifestation of the rulings of Islâm within it means the major Islâmic practices such as the *Jumu'ah*, two 'Eids, fasting in Ramadhân and Hajj without any prevention or hardship. Hence the intent is not that all of the observed laws be Islâmic.<sup>6</sup>

I did not find any differences between the jurists of the four Madhabs regarding this defining reason except that there occurred in their texts differences in style and variations in their expressions, which have been regarded by some researchers as being clear differences so they narrated conflicting statements, yet the matter is not so. For indeed amongst the jurists are those who stipulate the defining reason specifically, while from amongst them are those who express the necessary implications and its symbols are from the application of the rulings and the manifestation of security or fear and all of this has one and the same meaning. This is because the display of these symbols is sufficient enough as indications to the authority, victory and control and this not something strange for the one who knows the method of the scholars and their methodologies in research and compilation.

<sup>5</sup> These are non Muslims living in Muslim lands under a contract of security and protection who pay *Jizyah* (tax) in return for protection from the state and abstention from military service.

<sup>6</sup> Dr. Muhammad Ramadân al-Bûtî, *Qadâyah Fiqhiyyah Mu'âsarah* (Damascus: Maktabah al-Farâbî, 1414 AH, Fifth Edition), vol.1, p.182

This is what we will try to clarify by mentioning the evidence for this defining reason firstly from the authentic *Sunnah*, secondly by quoting a number of the statements of the scholars to provide reassurance for what we have established.

### **Firstly: The Evidence:**

This is the cause which we had mentioned the Legislator had stipulated explicitly in the *hadîth* of Buraydah (*may Allâh be pleased with him*) and declared its necessary implications and its signs in the *hadîth* of Anas (*may Allâh be pleased with him*).

**As for the hadîth of Buraydah:** *When the Messenger of Allâh (may the peace and blessings of Allâh be upon him) had appointed a leader over an army or a detachment he would advise its superior to have fear of Allâh and to be good to the Muslims who were with him. He would then say: ‘Fight in the name of Allâh and in the way of Allâh. Fight against those who disbelieve in Allâh. Attack and do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children.*

*When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and keep from doing any harm to them. Invite them to Islâm; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of the Muhâjirs and inform them that, if they do so, they shall have all the privileges and obligations of the Muhâjirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allâh like other Muslims, but they will not get any share from the spoils of war or fay<sup>7</sup> except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islâm, demand from them the Jizyah. If they agree to pay accept it from them and hold off your hands. If they refuse to pay the tax, seek Allâh’s help and fight them.*

*When you lay siege to a fort and the besieged appeal to you for protection in the name of Allâh and His Prophet, do not accord to them the guarantee of Allâh and His Prophet, but accord to them your own guarantee and the guarantee of your companions for it is lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allâh and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allâh’s Command, do not let them come out in accordance with His Command, but do so at your own command, for you do not know whether or not you will be able to carry out Allâh’s behest with regard to them.<sup>8</sup>*

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<sup>7</sup> That wealth which the non Muslims surrender without armed conflict. (Sahîh Muslim, Translation and footnotes by ‘AbdulHamîd Siddîqi) – [TN]

<sup>8</sup> Narrated by Muslim (1731)

Thus, the Messenger of Allâh (*may the peace and blessings of Allâh be upon him*) appended the state to the Muhâjirûn due to their presence in it and their authority over it. He then ordered the movement from a state which does not have a ruler from the People of Islâm to a country in which a ruler from amongst the People of Islam resides over. From those matters which signify that the abode is only considered as such is having acquisition of authority and the sultanate in such a manner that either the Muslims or the disbelievers own the proclamation of their rulings and judgements, it is on this basis. So if the authority belongs to the People of Islâm then it is an abode of Islâm and if the authority belongs to the disbelievers then it is an abode of disbelief.

**From this niche of this hadîth is the argument of Shaykhul-Islam Ibn Taymiyyah (may Allâh have mercy upon him) who says:**

And the land being a state of disbelief or a state of iman or a state of the immoral ones is not an intrinsic attribute of it rather it is a non essential attribute in accordance with its inhabitants.<sup>9</sup>

**He also states:**

And the places change their rulings with the change of the conditions of the their people so perhaps the place is an abode of disbelief if its people are disbelievers then it becomes an abode of Islâm when its people submit as Makkah was, may Allâh endow it with honour, in the beginning of the affair a state of disbelief and war.<sup>10</sup>

**As for the hadîth of Anas (may Allâh be pleased with him):** “The Messenger of Allâh (*may the peace and blessings of Allâh be upon him*) used to be on guard for when the *adbâ*n emerged, so if he heard it he would withhold (from waging war) and if not then he would attack.”<sup>11</sup>

**Hence in this there is a clear evidence that the manifestation of some of the rulings of Islâm are enough to judge a state as being of Islâm and these rulings are from the necessary implications of authority over the state as has preceded.**

**The intended meaning from that** is that which is relied upon in the judging of an abode as being of disbelief or Islâm are: the authority, sultanate and the ownership of the abode then following on from that are the manifestations of the judgements and likewise fear or security for the Muslims or the disbelievers.

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<sup>9</sup> *Majmû’ al-Fatawaa Ibn Taymiyyah*, compiled and arranged by ‘Abdur-Rahmân bin Qâsim al-’Âsimî an-Najdî and his son Muhammad, (*ar-Râ’âsah al-’Âmah li-Shu’ûn al-Haramayn ash-Sharîfayn*, n.d.), vol.18, p.282

<sup>10</sup> *Ibid.* vol.27, p.143.

<sup>11</sup> Agreed upon: *al-Bukhârî* (610) and *Muslim* (1365)

**In other words:** “The primary condition for the state being considered as one of Islâm is its being ruled by the Muslims and being under their sovereignty and their sultanate so at that time the rulings of Islâm are openly manifest and most of the inhabitants both the Muslims and the disbelievers feel safe due to the protective safeguard of Islâm; the Muslims due to their Islâm and the non-Muslims due to the contract of protection.”

**It is not from the stipulation of this state that there be residing in it Muslims just as long as it is under their rule.<sup>12</sup>**

**Regarding this Imâm ar-Rafî'i<sup>13</sup> says:**

It is not from the condition of the Islâmic abode that Muslims reside in it, rather it is sufficient that it be in the hand of the Imâm.<sup>14</sup>

This is demonstrated by the fact that Khaybar was under the jurisdiction of the Muslims despite the fact that its residents were disbelievers. From here the scholars have made from amongst the divisions of the abode of Islâm an abode which the Muslims conquer and its original inhabitants reside in it, *Ahlu-Dhimmah*, in exchange for paying the *Jizyah* or leaving. So the likes of these abodes are ruled to be of Islâm despite the fact that its inhabitants are disbelievers furthermore they have judges ruling amongst themselves with other than what Allâh revealed from the disbelieving laws and rulings of *jâhiliyyah*.

**The best statement and summarisation of the issue is what the ‘Allâmah, the Muhaqqiq (Verifier) ash-Shawkânî stated:**

Consideration is given to the manifestations of the word, so if the commands and prohibitions in the abode are by the People of Islâm such that none from amongst the disbelievers are able to display disbelief except that it be authorised by the People of Islâm then this is an abode of Islâm. Furthermore, the manifestations of the blasphemous characteristics does not harm it; this is because it is not displayed due to the strength or power of the disbelievers as is observed from *Abludb-Dhimmah* such as the Jews, Christians and those inhabitants under the contract of protection in the Islâmic provinces. Hence if the case is the opposite then the abode is also the opposite.<sup>15</sup>

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<sup>12</sup> Dr 'Abdul-Karîm Zaydân, *Ahkâm adh-Dhimmîyyîn al-Musta'minîn fî Dâr il-Islâm* (Mu'asisah ar-Risâlah, 1402 AH), p.18.

<sup>13</sup> Imâm Abu'l-Qâsim 'Abdul-Karîm bin Muhammad ar-Rafî'i, was from Khurasaan and he died in 623 AH/1226 CE. *Fath al-'Azîz Sharh ul-Wajîz* was published and printed in Beirut by 'Dâr ul-Fîkr' (n.d.) and can be downloaded from the website 'al-Meshkat': <http://www.almeshkat.net/books/open.php?cat=40&book=745>

He also has a history of Qazwîn. [EN]

<sup>14</sup> *Fath al-'Azîz*, vol.8, p.14.

<sup>15</sup> Imâm Shawkânî, Mahmûd Ibrâhîm Zaayad (ed.), *As-Sayl al-Jarrâr al-Mutadaffiq 'alâ Hadâ'iq al-Azhâr* (Beirut: Maktabah al-'Ilmiyyah, 1405 AH), vol.4, p.575

**Ibn Hazm** has abridged the words regarding this issue also by saying: “The abode is only attributed to its conqueror, the one who rules over it and is its possessor.”<sup>16</sup>

**Hâfidh Abu Bakr al-Ismâ’îlî** also outlined it in his book ‘*Tiqâd Ahlus Sunnah*’ and made establishment and hegemony the reason for ruling an abode as being an abode of Islâm; when he says:

And they view the abode as being an abode of Islâm, not an abode of disbelief as viewed by the *Mu’tazilah*, this is as long as the call to prayer and its establishment is manifest and its people are safely enabled to it.<sup>17</sup>

## **SECONDLY: THE STATEMENTS OF THE SCHOLARS: THE STATEMENTS OF THE HANAFÎ SCHOLARS:**

The Hanafî jurists compose most of the scholars (who) explain the issue of the abode, clarifying that which branches out from it and some have expressed that the defining reason is supremacy and guardianship over the state. Some of them mentioned a symbol that is from the manifestation of (Islâmic) rituals and the circulation of the rulings as being a sufficient indication of supremacy and command and from amongst them are some who have stipulated both matters.

**As-Sarkhasî** has affirmed in his ‘*Mabsût*’ that:

The place is only ascribed to us or them in view of power and supremacy hence every place in which the ruling of polytheism is manifest then the power in that place belongs to the polytheists and is consequently a place of war and every place in which the ruling of Islâm is manifested then the power belongs to the Muslims.<sup>18</sup>

This has also been acknowledged by the author of ‘*Qawâid al-Fiqh*’ when he says:

The abode of Islâm is: that in which the Muslims are supreme over and in security while the abode of war is: that which is contrast to the abode of Islâm meaning: that which non Muslims reign supreme over.<sup>19</sup>

And this is **Ibn ‘Âbidîn** (who) is content with the hegemony of the Muslims and their guardianship over the abode as being a ruling for it being from amongst the abodes of Islâm even if there is not found within it a sign from ruling with what Allâh had revealed, so he says:

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<sup>16</sup> Ibn Hazm al-Andalûsî, Ahmad Shâkir (ed.), *Al-Muhallâ* (Cairo: Dâr ut-Turâth, n.d.), vol.13, p.140

<sup>17</sup> Al-Hâfidh Abî Bakr Ahmad bin Ibrâhîm al-Ismâ’îlî, Jamâl ‘Azûn (ed.), *Itiqâd Ahlus-Sunnah* (UAE: Dâr ul-Rayân, 1413 AH), p.51

<sup>18</sup> Shamsuddîn as-Sarkhasî, *Al-Mabsût* (Beirut: Dâr ul-Fikr, 1406 AH), vol.10, p.114

<sup>19</sup> *Qawâid al-Fuqahâ’*, vol.1, p.288

With this it becomes apparent that what is in Shâm from the Taymullâh Mountains and what is known as the Mountains of the Druze, and some of the bordering lands, all of it is an abode of Islâm because even though within them are the rulers of the Druze and Christians and they have judges in accordance with their religion and some of them publicly blaspheme Islâm and the Muslims, nevertheless they are under judgement of the leaders of our affairs and the countries of Islâm surround their countries from every side and if the ruler wants to implement our rulings amongst them then he can do it.<sup>20</sup>

**And if Ibn ‘Âbidîn was satisfied, in the aforementioned text, with the hegemony of the Muslims over the abode and its entering under their protection for ruling an abode as being one of Islâm; even with the non existence of Sharî‘ah rulings, then here is al-Jassâs stipulating both of the matters when he says:**

Indeed the ruling regarding an abode is only connected to the open manifestations, supremacy and implementations of the judgement of the religion. The evidence for that is that when we have conquered an abode of war and imposed our rulings over it then it becomes an abode of Islâm, whether it is adjacent to an abode of Islâm or not. The case is similar with respect to an abode of Islâm if the disbelievers conquer it and impose their rule over it then it necessitates that it be from an abode of war.<sup>21</sup>

**Likewise, as-Sarkhasî has mentioned both of the matters together when he stated:** Indeed the abode of Islâm is the name of the place which is under the hand of the Muslims and the indication of that is that the Muslims are safe in it.<sup>22</sup>

**And he says in another place:**

That which is taken into account with respect to judging an abode is the presence of a Sultan and full power in the manifestations of the control.<sup>23</sup>

**Finally, al-Kasâni<sup>24</sup> states:**

There is no difference amongst our companions with respect to the fact that the abode of disbelief becomes an abode of Islâm with the manifestation of the commands of Islâm in it.<sup>25</sup>

**The author of ad-Durr al-Mukhtâr<sup>26</sup> explains the intent of the Ahnâf regarding the manifestation of the rulings so he says:**

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<sup>20</sup> *Hâshiyah Ibn ‘Âbidîn* (Makkah al-Mukarramah: al-Maktabah at-Tijâriyyah, 1386 AH) vol.4, p.175

<sup>21</sup> *Sharh Mukhtasar al-Tahâwi* (in the manuscript) reported from *al-’Ulûmâh*, p.100.

<sup>22</sup> *Sharh as-Sayr*, vol.3, p.81. Reflect upon the words “and the indication of that...”

<sup>23</sup> *Ibid.* vol.5, p.1073

<sup>24</sup> He is Alaudîn Abû Bakr Ibn Mas’ûd al-Kasâni, a Hanafi scholar. (died 587 AH/1191 CE).

<sup>25</sup> Alaudîn Abû Bakr Ibn Mas’ûd al-Kasâni, Muhammad Adnân Yâsîn Darwish (ed.), *Badâ i’ as-Sanâ i’* (Beirut: Dar Ihyâ at-Turâth al-’Arabî, Second Ed. 1419 AH/1998 CE) vol.7, p.130

<sup>26</sup> See vol.4, p.130

The abode of war becomes an abode of Islâm with the imposition of the rulings of the People of Islâm in it such as *Jumu'ah* and *Eid*.

### **THE STATEMENTS OF THE MÂLIKÎ SCHOLARS:**

As for the scholars of the Mâlikiyah then they have made the *adhâن* a distinguishing sign between the two abodes and that is because it is an indication of the manifestations of the Islâmic ritualistic symbols which are from amongst the signs of the supremacy of the Muslims and their authority over the abode.

#### **Ibn 'AbdulBarr states:**

I do not know any difference regarding the obligation of the *adhâن* on the people of large cities because it is one of the distinctive and indicative signs between the abode of Islâm and the abode of disbelief. When the Prophet (may the peace and blessings of Allâh be upon him) used to send a detachment he used to say to them: 'If you hear the *adhâن* then withhold.<sup>27</sup>

#### **Al-Mâzârî said:**

**Regarding the adhâن there are two meanings:** the first of them is the exhibition of the Islâmic rituals and the notification that the abode is one of Islâm...<sup>28</sup>

#### **Az-Zurqânî says:**

As for in al-Misr then it is a collective obligation so if they abandoned it then they have sinned and are fought because it is the symbol of Islâm and from the distinguishing signs between the abode of Islâm and abode of disbelief.<sup>29</sup>

#### **Al-'Abdârî<sup>30</sup> remarks:**

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<sup>27</sup> *Al-Istidhkâr*, vol.4, p.18, and see *at-Tamhîd* (the categorised and arranged version), vol.3, p.61

<sup>28</sup> Al-Qurâfî, Dr Muhammad Hajjî (ed.), *adh-Dhakhîrah* (Dâr al-Gharb al-Islâmiyyah, 1994 CE) vol.2, p.58

<sup>29</sup> *Sharh az-Zurqânî 'alâ Muwatta' Imâm Mâlik* (Beirut: Dâr ul-Ma'rifah, 1398 AH) vol.1, p.148, and see: al-Qâdî Abî'l-Walîd Sulaymân bin Khalaf bin Sa'd bin Ayub at-Tujaybî al-Bâjî, *al-Muntaqâ Sharh Muwatta Imâm Mâlik*, vol.1, p.133

**Editor's Note:** al-Bâjî was born in Badjos (Batalywâs) in Muslim Spain in 403 AH/1012 CE but then his family moved to Beja hence his *nisba* 'al-Bâjî'. He died in 494 AH/1101 CE. He was a scholar of *fiqh* and was well versed in the Mâlikî madhab, he was also a judge and wrote books concerning *fiqh*, *tafsîr*, *hadîth*, *ilm ur-Rijâl* and poetry. He had many disagreements with Ibn Hazm and some of al-Bâjî's students went on to become jurists themselves, such as Abû Bakr at-Tartûshî who settled and died in Alexandria, Egypt. [EN]

<sup>30</sup> He is Muhammad ibn Yusuf ibn Abî'l-Qâsim al-'Abdârî (d.897 AH/1491 CE) from Granada (Spain), he is not to be confused with the Moroccan scholar Abû Muhammad ibn Muhammad al-'Abdârî, who is better known in any case as Ibn ul-Hajj, the famous author of *al-Madkhal*. The relational adjective (*nisba*) 'al-Abdârî' suggests that his lineage goes back to the Arabian tribe Abduddar. This means that

In the *adhâن* is the entrance of the time, the call to the congregation, the place of its prayer, the exhibition of the rituals of Islâm and (the fact) that the abode is one of Islâm.<sup>31</sup>

**Ahmad bin Ghanîm observes that:** “From its benefits is the notification that the abode is one of Islâm.”<sup>32</sup>

### **THE STATEMENTS OF THE SCHOLARS OF THE SHÂFI'IYYAH:**

The division of the abode of Islâm into three types by the scholars of the Shâfi'iyyah makes it clearly apparent that they take into consideration the defining reason of victory and hegemony.

**Rather their Shaykh, ar-Rafi'i, has declared that when he said:**

“It is sufficient for it to be an abode of Islâm by its being under the possession of the Imâm even if there are no Muslims therein.”<sup>33</sup>

Furthermore, the final word in this significant piece of text is in conformity with what the Ahnâf had determined before. **Al-Mâwardî**<sup>34</sup> had divided what the Muslims had taken over into three categories and it is distinctly apparent from that what has to be taken into consideration according to his Shâfi'i companions is the hegemony and possession of the lands so he stated:

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his family originally migrated from Arabia or that his ancestors might have settled there after Spain came under Islâmic rule. [EN]

<sup>31</sup> Muhammad ibn Yusuf ibn Abi'l-Qâsim al-'Abdarî, *At-Tâj wa'l-Iklîl li Mukhtasar Khalîl* (Beirut: Dâr ul-Fikr, 1398 AH) vol.1, p.451

<sup>32</sup> Ahmad bin Ghanîm bin Sâlim an-Nâfrâwî al-Mâlikî, *Al-Fawakah ad-Diwâni* (Beirut: Dâr ul-Fikr, 1415 AH) vol.1, p.171

<sup>33</sup> *Fath al-'Azîz*, vol.8, p.14

<sup>34</sup> Abu'l-Hasan Ali bin Muhammad bin Habeeb al-Basri al-Mârwadî, was one of the main judges during the Abbasid state and authored many large classifications in Shâfi'i *fiqh*. He studied with many scholars including Abu'l-Qâsim 'Abdul-Wâhid ibn Muhammad as-Samîrî in Basra and also Abu Hâmid Ahmad ibn Abî Tâhir al-Isfârînî in Baghdad. Al-Mârwadî was born in Basra in 364 AH (975 CE) and his father used to sell rosewater, rose in Arabic being 'Warda' and water being 'Maa', thus his *nisba* 'al-Mârwadî.' His father moved to Baghdad which is where al-Marwadi began to listen to the lessons of *hadîth* and later after excelling in Qur'an, *tafsîr*, in 429 AH took the post as judge. He was close to the Abbasid rulers and some of their ministers and for this reason he has many books on the *fiqh* of politics, government and related areas. Of his main books are: *Kitâb ul-Hâwî al-Kabîr*, *Kitâb Nasîhatul-Mulûk*, *Kitâb ul-'Iqnâ'*, *Kitâb Adab ul-Qadi*, *Adab ud-Dunya wa'd-Dîn*, *Ahkâm us-Sultâniyyah*, *Qânûn ul-Wizârah*, *Siyâsat ul-'A'lâm in-Nabawîyyah*, *an-Nakt wa'l-'Uyûn*. He was accused of *Titzâl* yet was cleared of this by his student al-Khatâb al-Baghdâdî. Al-Mârwadî died in Rabi' al-Awwal in 450 AH (1058 CE) at 86 years of age. [EN]

**As for the lands which are taken over by the Muslims then they are of three types:**

**The first of them:** is that which is acquired by force and compulsion until they (inhabitants) leave it via killing, taking into captivity or withdrawal, this land then becomes an abode of Islâm whether its residents are Muslims or whether the polytheists return it to the possession of the Muslims and it is not permissible to relinquish it to the polytheists in order that it does not become an abode of war.

**The second type:** that which is acquired from them spontaneously due to their evacuation from it out of fear then it becomes due to its capture of it a form of endowment, such a land becomes an abode of Islâm.

**The third type:** that which is taken over peacefully on the condition that it remains in their hands with them paying the land tax, consequently this is of two kinds:

**The first of them** is that peace is made with them on the condition that the land ownership belongs to us hence with this settlement it becomes a form of endowment and an abode of Islâm.

**The second of this type** is that peace is made with them on the condition that the lands belong to them and the land tax is imposed upon them which they contribute to from it and this land tax takes the ruling of the Jizyah so whenever they become Muslims it is dropped from them furthermore their land does not become a land of Islâm rather it is a land of covenant (Dâr al-‘Ahd).

**Abu Hanîfah stated:** “Indeed their land becomes a land of Islâm with the peace settlement and they become People of Protection from whom the Jizya is taken.”<sup>35</sup>

Thus, we see that every form of capture from the Muslims makes the abode according to the Shâfi’iyyah a state of Islâm whether Muslims reside there or not or whether the rulings of Islâm are implemented or not, except in one form which is the last in the listing of al-Mâwardî. That is the case in which the settlement is concluded on the conclusion that the ownership of the land be for the disbelievers, so this state becomes a state of covenant according to the Shâfi’iyyah and an abode of Islâm according to Abu Hanîfah.

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<sup>35</sup> Al-Mâwardî, *al-Ahkâm as-Sultâniyyah* (Beirut: Dâr Kutub al-‘Ilmiyyah, n.d.) p.173

## **THE STATEMENTS OF THE SCHOLARS OF THE HANÂBILAH:**

We have found the categorisation of the Shâfi'iyyah to be similar with the Hanâbilah from that which signifies their taking into consideration of this defining reason and relying upon it.

### **Ibn Qudâmah notes:**

#### **As for the abode of Islâm then it is of two kinds:**

**The first of them** are lands demarcated by the Muslims such as Baghdad, Basrah and Kufah, this portion are ruled by Islâm even if there are *Ahludh-Dhimmah* present there, because Islâm is apparent in this area and nothing comes before Islam.

**The Second:** lands that have been conquered by the Muslims such as the regions of Sham even if there is only one Muslim ruling by Islâm, because it is possible that on account of that one Muslim it is still a Muslim land as Islam is dominant. If there is not a single Muslim there and all of the people are Ahl udh-Dhimmah the land is considered a non-Muslim land because a Muslim land is on possible via the presence of even a single Muslim.

#### **As for the country of the disbelievers then it is of two kinds also:**

**The first of them:** a country that belonged to the Muslims and then the disbelievers conquered them such as the coastal areas then this is like the area mentioned before; if there is a single Muslim inside it then it is adjudged to be an abode of Islâm, and if there is not even a single Muslim inside it then it is an abode of disbelief.

**The second:** an abode that did not originally belong to the Muslims such as India and Rome, so if there is not a single Muslim then it is considered a disbelieving land because the country belongs to them and its people inhabit the area.<sup>36</sup>

**Some of the Hanabilah have stated that conditions of habitation must be met and by that it is meant that the dominance of Islamic regulations is sufficient to indicate preponderance and security (i.e. a Muslim land).**

### **Abu Ya'la al-Hanbalî said:**

Every abode in which the rulings of Islâm reign supreme without the rulings of the disbelievers, is an abode of Islâm and any abode in which the rulings of the disbelievers has the upper hand, without the Islamic rulings, is an abode of disbelief.<sup>37</sup>

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<sup>36</sup> Ibn Qudâmah al-Maqdisî, *Al-Mughnî* (Beirut: Dâr ul-Kitâb al-'Arabî, 1403 AH), vol.6, p.35

<sup>37</sup> *Al-Mu'tamadfi Usûl ad-Dîn*, p.267

**Ibn Muflīh remarked:**

So every abode in which the rulings of the Muslims dominate is an abode of Islām and if the rulings of the disbelievers dominate then it is an abode of the disbelievers and not an abode belonging to other than them.<sup>38</sup>

These are the texts of the jurists and we have noticed that they have made from amongst the abode of Islām that which the Muslims conquered and the disbelievers remained settled there in exchange for paying the *Jizyah*. From that which there is no doubt is that these disbelievers judged by other than what Allāh revealed. From those matters which clearly indicate (this) with no ambiguity or obscurity in it is the fact that what is taken into consideration is authority, victory and hegemony over the state and ownership of it. Also, that the manifestations of the rulings are merely a sign at times completely absent, as is absent here, and weak at other times to an extent that some of the rulings of Islām become apparent rather accompanying it are the rulings of the disbelief. However, the manifestations of blasphemous characteristics do not harm it because it is not manifested due to the power of the disbelievers nor by their influence as stipulated by ash-Shawkānī, may Allāh have mercy upon him.

The similitude of the state with regards to that is like the example of one who became a Muslim so it is not stipulated that for him to be judged with Islām that he implements all of its rulings and he is not expelled from it merely by performing the major sins. Likewise for the state; it is not stipulated that for it to be judged with Islām that it implement all of its laws completely within it and it is not excluded from this description to being described with disbelief with the manifestations of some of the rulings of disbelief.

**And from that which he relies upon is this:** that the Prophet (may the peace and blessings of Allāh be upon him) judged anyone who came with the two testimonies with Islām just as he judged the abode which publicised the *adhbān* with Islām. Thus, if the Legislator did not judge the perpetrator of the major sins who did not consider it halāl with disbelief then likewise he does not judge the abode with disbelief by the mere manifestations of the rulings of disbelief.

This is not contradicted by what the majority of the scholars have said regarding the necessity of the preponderance of Islamic regulations and those who do not make it conditional that every single ruling has to be applied, rather it is sufficient that they are

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<sup>38</sup> Al-Faqīh al-Muhaddith Abī 'Abdullaah Muhammaad bin Muflīh al-Maqdīsī, Shuayb al-Arnā'ūt and 'Umar al-Qayyām (eds.), *Al-Ādāb ash-Shāri'iyyah* (Beirut: Mu'asisah ar-Risālah, 1416 AH) vol.1, p.212

clearly apparent especially the greater indications such as the *adhân*, prayers, celebrations etc. and this is enough to show that Islâm is being followed and exemplified. At-Tahânahâwî, from the *Ahnâf*, says in his *Kashâf*:

There is no difference in that an abode of war becomes an abode of Islâm with the implementation of some of the rulings of Islâm in it.<sup>39</sup>

**And here is the book ‘ad-Durr al-Mukhtâr’ providing examples of rulings after his stipulation of it so he says:**

The abode of war becomes an abode of Islâm with the implementation of the rulings of Islâm in it, such as *Jumu’ah* and *‘Eid*...<sup>40</sup>

**Similar to this is the example provided in the book ad-Durar al-Hukkâm so he says:**

The abode of war becomes an abode of Islâm with the execution of the rulings of the People of Islâm such as the *Jumu’ah* prayers and the *‘Eids*, even if the original disbeliever remains in it.<sup>41</sup>

Ad-Dusûqî<sup>42</sup> states and he is from the Mâlikiyyah:

....because the countries of Islâm do not become abodes of war by the disbelievers taking them by force, as long as the rituals of Islâm are established within them.

**He then emphasises this when he says:**

The country of Islâm does not become an abode of war merely due to their capturing it, rather until the establishment of the symbols of Islâm have been discontinued as for the ritualistic symbols of Islâm continuing or most of it is established therein then it does not become an abode of war.<sup>43</sup>

What we have observed from the categorisations of the Shâfi’îs and the Hanâbilah, which we indicated to shortly, is a powerful evidence also; where they judged with Islâm the abode in which *Abludb-Dhimmah* lived and they judged with other than what Allâh revealed as is the very nature of the case! Although it is under the authority of the Muslims.

**From that which indicates the correctness of that** is the *hadîth* of Anas (*may Allâh be pleased with him*) which the Mâlikiyyah use as evidence that the *adhân* is a distinguishing

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<sup>39</sup> Muhammad Alî bin Alî at-Tahânahâwî, *Kashâf Istilâhâth al-Funûn* (Beirut: Dâr Kutub ‘Ilmiyyah, 1418-19 AH/1998 CE) footnotes by Ahmad Hasan Basaj, vol.2, p.96.

<sup>40</sup> *Ad-Durar al-Mukhtâr*, vol.4, p.175.

<sup>41</sup> *Ad-Durar al-Hukkâm Sharh Ghurar al-Ahkâm* by Manla Khusrû al-Hanâfi, vol.1, p.331

<sup>42</sup> Muhammad ibn Ahmad ibn ‘Arafah ad-Dusûqî, he was a Mâlikî scholar and he died in 1230 AH/1815 CE in Mugawarin, Cairo. [EN]

<sup>43</sup> Muhammad ibn Ahmad ibn ‘Arafah ad-Dusûqî, Muhammad ‘Alaysh (ed.), *Hâshiyah ad-Dusûqî* (Beirut: Dar ul-Fikr, n.d.) vol.2, p.188.

sign between the two abodes: ‘*The Messenger of Allâh (may the peace and blessings of Allâh be upon him) used to attack the enemy when it was dawn, if he heard the adhâñ he would withhold and if not then he would attack.*’<sup>44</sup>

Hence the Messenger of Allâh was content with in his judging this abode as being one of Islâm with the manifestation of some of the rulings of Islâm.

**An-Nawawî says:** “There is evidence in this *hadîth* that the *adhâñ* prevents the invasion of the people of that place for indeed it is an evidence of their Islâm.”<sup>45</sup>

**We come to the conclusion that the matter in which there is no difference upon in the view of the researcher between the jurists of the four madhabs is:**

That the defining reason of ruling an abode as being of disbelief or Islâm is authority, victory and possession of the abode and some of them have clearly stipulated that and some of the others have stated the necessity of that or its sign from amongst the manifestations of the ritualistic symbols and rulings. Additionally, that the implementation of all the rulings of Islâm is not stipulated for it to be judged as being of Islâm rather some of it suffices; even perhaps it is non-existent, as we have seen, in the case of an abode which the People of Islâm took over and the *Ahludh-Dhimmah* still remain in it in exchange for paying the *Jizyah* or the land tax. This stresses the point that the determining of an abode as being an abode of Islâm is not affected by the manifestations of the rulings of disbelief if these (*kufr*) rulings are not manifested due to the power of the disbelievers and their authority over the abode.<sup>46</sup>

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<sup>44</sup> Agreed upon: al-Bukhârî (610) and Muslim (1365) and it has preceded.

<sup>45</sup> *Sharh an-Nawawî*, vol.4, p.84.

<sup>46</sup> So all of this refutes the simplistic and modern interpretations of the ignorant pseudo-scholars, who do not have any books or literature in Arabic and only write in English even though Arabic is supposed to be their mother tongue! So for example, Abû Hamza al-Misrî in his ‘book’ *Allâh’s Governance on the Earth*, which is available Online, on page 162 (footnote np.149) states:

**“The term Dâr ul-Islâm is a Shari'a term that makes reference to a land ruled over by Islâmic law, where the Muslims are prevailing with the Shari'a and the Jews are paying the jizya...the main point to understand here is that the complete dominance of Islâmic law over the land is what makes the location Dâr ul-Islâm.”!!** As we have seen from the statements of Islâmic scholars, this definition is totally incorrect, flawed and ignorant. [EN]